IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1257 of 2004
In
SPECIAL CIVIL APPLICATION No. 8166 of 1999
with
CIVIL APPLICATION NO. 4810 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BARAD PRAVINSINH ROOPSINH - Appellant
Versus
STATE OF GUJARAT & 2 - Respondents

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Appearance :
MR RC JANI for Appellant.
MR NEERAJ SONI, AGP, for Respondent : 1,
RULE SERVED for Respondent : 2
MR HS MUNSHAW for Respondent : 3,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 28/11/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

This Letters Patent Appeal arises out of the judgment and order passed in Special Civil Application No. 8166/1999 on 26th March, 2004. The appellant, who was the petitioner in the said petition, was one of the selectees in the select-list prepared by the respondent-authorities on 2nd July, 1992, pursuant to the advertisement dated 28th February, 1991 for 27 posts of Talati-cm-Mantri in Kheda District. The name of the appellant figured at serial No.20 in the said select-list. The select-list was supposed to remain operative for a period of one year initially. However, the operation period came to be extended till 30th June, 1997. However, as the appellant was not given appointment, he moved the said petition in 1999, seeking following reliefs:-

> "(A) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ,order or direction in the nature of mandamus directing the respondents to exhaust the select list prepared pursuant to the advertisement dated 28.2.1991 and which is still in existence.
>
> (B) Pending admission, hearing and final disposal

of this writ petition, Your Lordships may be pleased to direct the respondents to give appointment to the present petitioner who is already selected and placed at serial no.20 in the select list which is prepared pursuant to the advertisement dated 28.2.1991.

(C) The Honourable Court may be pleased to grant any such other and further reliefs as deemed just and proper in the facts and circumstances of the case and in the interests of justice."

2. Before the appellant moved the petition, another selectee, namely, Dodia Dilipsinh Prabhatsinh, whose name figured at serial No.16 in the said select-list, preferred Special Civil Application No. 7323/1997 and prayed for issuance of direction to the respondents to exhaust the said select-list and to keep it alive till the new select-list is prepared. The said petition was disposed of by judgment dated 30th June, 1999 whereby respondent No.1 was directed to consider the case of the said petitioner, whose name figured in the select-list, for giving appointment on the post of Secretary, Gram Panchayat. It was observed by the learned Single Judge that the appointment may not be denied to the said petitioner only on the ground of

there being a ban on fresh recruitment by the Finance Department and that necessary orders of appointment be made within a period of one month from the date of receipt of the writ of the order.

2.1 Aggrieved by the said judgment and order, Letters Patent Appeal No. 1479/1999 came to be preferred by the respondent-authorities, and by order dated 6th August, 2003 the said appeal came be dismissed and the order passed by the learned Single Judge was confirmed. Despite the aforesaid petition being Special Civil Application No.7323/1997 filed by Dodia Dilipsinh Prabhatsinh, came to be allowed, as the present appellant was not given appointment, he preferred Special Civil Application No. 8166 of 1999, which came to be dismissed by the impugned order. Hence, this Letters Patent Appeal.

3. Learned Advocate Mr.R.C.Jani appears for the appellant, learned Advocate Mr.H.S.Munshaw appears for the Panchayat-authority and learned A.G.P. Mr.Neeraj Soni appears for the State.

4. Learned Advocate Mr.Jani submitted that the learned Single Judge overlooked the aspect that the policy of the Government of putting a ban of 10% on recruitment was implemented in a discriminatory manner, whereby ban was sought to be implemented in Kheda District, whereas recruitment was made and the complete select-list was exhausted by making appointment in another district viz. Bharuch District and, therefore, the appellant was meted out a discriminatory treatment, which ought to have been appreciated by the learned Single Judge.

4.1 It was also contended by Mr.Jani that the learned Single Judge has not followed the view taken by another learned Single Judge in a petition filed by a co-selectee of the appellant, where a direction was given to give appointment to that petitioner, and has dismissed the petition of the present appellant. It was pleaded by Mr.Jani that the learned Single Judge was bound to follow the view taken by the earlier coordinate Bench and if at all the learned Single Judge did not agree with the view taken by the earlier

coordinate Bench, it was the duty of the learned Single Judge to refer the matter to a Larger Bench to follow the judicial discipline.

4.2 Mr.Jani submitted further that a situation has arisen where a person in the same select-list is directed to be given appointment by this Court, which has become final, and the same Court denies that very relief to the appellant.

4.3 Mr.Jani submitted further that, in fact, the respondent-authorities were bound by the order passed in the case of Dodia Dilipsinh Prabhatsinh and they should have operated the select-list and given appointment to the appellant.

4.4 Mr.Jani submitted that the aspect of delayed action by the appellant has weighed with the learned Single Judge. Mr.Jani submitted that no fault can be found with the appellant in awaiting the result of the co-selectee's petition before asserting his right, and his alleged inaction has to be viewed as an attempt to avoid litigation rather than waiver of his

right. Mr.Jani, therefore, submitted that this Letters Patent Appeal may be allowed, the order of the learned Single Judge may be set aside and the respondent-authorities may be directed to give appointment to the appellant, as his name already figured at serial No.20.

5. The appeal is opposed to by learned Advocate Mr.Munshaw. He submitted that the select-list was supposed to be operated for a period of one year and thereafter its validity was extended till 30th June, 1997 and therefore, when the petition was filed by the present appellant and the order was passed by the learned Single Judge, the select-list did not exist. Mr.Munshaw submitted further that subsequent to the expiry of the select-list, after giving fresh advertisement, another select-list has also been prepared.

5.1 It was also submitted by Mr.Munshaw that the appointment could not be effected because of the Policy of the Government banning recruitment upto 10%. He submitted that the select-list came to be operated

only upto Serial No.6, and as a result, cases of selectees at serial Nos.7 to 15 and 17, 18 & 19 will be adversely affected if the appointment is given to the appellant, whose name figured at serial No.20 in the select-list. Mr. Munshaw submitted that administration in each district is independent of each other, both administratively and financially and, therefore, the case in respect of one cannot be applied to the case in respect of another District. Mr.Munshaw has further submitted that the Panchayats have only implemented the Policy of the Government by not giving appointments, and the Government is the regulatory authority. Mr.Munshaw submitted that judgment in the case of Dodia Dilipsinh Prabhatsinh does not lay down any principle of law, but, it is decided on facts and merits of that case. The case of the appellant before the learned Single Judge, therefore, could not be governed by the said judgment. Mr.Munshaw ultimately submitted that the appeal may, therefore, be dismissed.

6. Learned A.G.P. Mr.Soni contended that the judgment in the case of Dodia Dilipsinh Prabhatsinh

was a judgment in *personem* and not in *rem*; that two prayers were made, viz. to exhaust the select-list and to keep the list alive till the appointments are made. If those reliefs were granted by the learned Single Judge, it would have some bearing on the case of the appellant and would have taken care of the entire select-list, but, the relief which is granted by the learned Single Judge is a direction to appoint Dodia Dilipsinh Prabhatsinh, and the prayer regarding operating and keeping the select-list alive was not granted. Learned A.G.P. Mr.Soni further submitted that the select-list has already ceased to exist after 30th June, 1997 and the present appellant's petition was filed thereafter in the year 1999 and, therefore, at that time, the select-list did not exist. It was also submitted that in the case of Dodia Dilipsinh Prabhatsinh no ratio decidendi is laid down and, therefore, it cannot be considered as a binding precedent. The prayer for keeping the select-list alive was not granted by the learned Single Judge in that case and, therefore, when the petition was filed, select-list was non-existent. Mr.Soni, therefore, submitted that the appeal may be dismissed. He relied

on the decisions rendered in the cases of ***(1) National Fertilizers Ltd. and others v. Somvir Singh, (2006)5 SCC 493, and (2) State of U.P. and others v. Rajkumar Sharma and others, (2006)3 SCC 330.***

7. Learned Advocate Mr.Jani in rejoinder reiterated the grounds taken by him initially and in support, placed reliance on the decisions rendered in the cases of ***(1) Ayyaswami Gounder and others v. Munnuswamy Gounder and others, AIR 1984 SC 1789, (2) Somabhai Mathurbhai Patel v. New Shorrock Mills, 1983 GLR 273, and (3) Vikramjit Singh v. State of Madhya Pradesh, AIR 1992 SC 474.***

8. We have taken into consideration the contentions raised before us.

8.1 It is not in dispute that the select-list prepared on 2nd July, 1992 pursuant to advertisement dated 28th February, 1991 was supposed to be operative/alive for a period of one year and its validity or life was extended till 30th June, 1997 and thereafter the select-list ceased to operate. The

petition was filed by the appellant in the year 1999 when the said select-list was not alive or in existence.

8.2 The petition by Dodia Dilipsinh Prabhatsinh was for issuance of a direction on the respondents to exhaust the said select-list and to keep it alive for making appointment on the posts of Talati-cum-Mantri of the Gram Panchayat.

8.2.1 The learned Single Judge, however, did not grant any of the two reliefs. The prayer for exhausting the select-list was not allowed as such, except that a direction was given to give appointment to Dodia Dilipsinh Prabhatsinh. Likewise, the relief for keeping the select list alive was also not granted. On reading the said judgment, we find that the learned Single Judge has not made any observation that there was discrimination in operating the select-list between District of Bharuch and District of Kheda, nor do we find that direction to give appointment to the petitioner before him was given on that basis. The Division Bench in the Letters Patent

Appeal did not interfere with the order and confirmed the order of the learned Single Judge. The said order has, thus, attained finality.

8.3 On the other hand, we find substance in the arguments advanced by Mr.Munshaw and the learned A.G.P. that the said judgment and order did not operate in *rem*. By that judgment and order, a direction was given to appoint the petitioner before that Court. It is true that the direction was given after the select-list ceased to be operative, but, that direction would not revive or re-validate the entire select-list and make it operative, particularly when that relief was not granted. In such a situation, direction in respect of that petitioner for giving appointment, will not invest the appellant with any right to get appointment. In this regard, we may refer to the decision in ***State of U.P. And othres v. Rajkumar Sharma*** (supra), wherein it is held that selectees cannot claim appointment as a matter of right, and mere inclusion in the select-list does not confer any right to be appointed even if some of the vacancies remain unfilled. Differently put, by virtue

of such an order in case of a co-selectee, a right would not accrue in favour of the appellant. The right of the petitioner got extinguished when the select-list became inoperative after 30th June, 1997.

8.4 We may also refer to the decision in ***National Fertilizers Ltd. and others*** (supra), where it is held that where appointment came to be made in violation of ban on recruitment, other workmen cannot claim right to appointment based thereon. Even if some other recruitments are made illegally or in violation of the ban, a selectee cannot claim any legal right on the basis of such appointment. The contention, therefore, that as some appointments were made in other Districts contrary to the ban of recruitment to the extent of 10%, the appellant cannot claim a right to be appointed on the ground of parity, deserves to be accepted. Contention of the appellant to the contrary therefore cannot be accepted and is turned down.

9. Coming to the question as to whether the learned Single Judge could have taken a view different from

the view taken by another coordinate Bench in case of Dodia Dilipsinh Prabhatsinh, it may be observed that the view taken by the learned Single Judge in that case was on the facts of that case and did not lay down any absolute proposition of law to make that judgment/order a precedent. Though the select-list did not exist, when the said order was passed, the learned Single Judge deemed it proper to direct the respondent-authorities to give appointment to the petitioner before him. But, the learned Single Judge at the same time did not give direction to exhaust the select-list, nor did the learned Single Judge order to keep the select-list alive, which were the two main prayers of the petitioner there and which are main prayers here in the present case. The contention cannot be accepted.

10. Additionally, there is a factor of delay coming in the way of the appellant. There was a sizeable delay in appellant initiating action even after the validity of the select-list expired in the year 1997, till when he could have claimed that he was waiting for the list to be operated. However, when the

validity of the select-list expired in June, 1997, he ought to have initiated action forthwith. Instead, he initiated action in the year 1999. In the meantime, fresh advertisement was issued and select-list was prepared. At that time also, he had not taken any action and, therefore, when the petition was filed and considered by the learned Single Judge, no fault can be found when the learned Single Judge refused to interfere with the matter, when the select-list did not exist, fresh select-list had come into existence subsequently and the appellant had approached the learned Single Judge after the said event at a belated stage. Entertaining such an appeal would result in administrative chaos and would lead into multiplicity of proceedings. In our view, therefore, the order of the learned Single Judge does not call for any interference.

11. Learned Advocate Mr.Jani relied on the decisions in the cases of **(1) Ayyaswami Gounder and othrs v. Munnuswamy Gounder and others, AIR 1984 SC 1789, and (2) Somabhai Mathurbhai Patel v. New Shorrock Mills, 1983 GLH 273,** wherein it is held that a view expressed

by one Bench of a High Court binds another coordinate Bench of the said Court and if the coordinate Bench is in disagreement, judicial discipline requires that the matter should be referred to a Larger Bench. There cannot be any dispute on this principle, but, in the facts of the case, as we have discussed earlier, the decision of the earlier learned Single Judge in the case of Dodia Dilipsinh Prabhatsinh was rendered in *personem* and did not lay any ratio decidendi. It cannot be said that a different view was taken by the learned Single Judge in the subsequent matter, though relating to the same select-list, but, in different sets of facts and circumstances. The ratio decidendi laid down in the aforesaid judgments, therefore, has no application to the facts of the present case.

12. The appeal, therefore, does not merit acceptance and must fail. The appeal stands dismissed. No order as to costs.

Order on C.A. No. 4810/2004

Since the main appeal is dismissed, this Civil Application for stay does not survive and it stands disposed of accordingly.

[A.L.Dave,J.]

[Sharad D.Dave,J.]

(patel)